

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

**FINAL DECISION**

OAL DKT. NO. EDS 15629-13

AGENCY DKT. NO. 2014 20356

**M.A. ON BEHALF OF A.A.,**

Petitioners,

v.

**JERSEY CITY BOARD OF EDUCATION,**

Respondent.

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**David R. Giles, Esq.,** for petitioners

**Robin T. McMahon, Esq.,** for respondent (Cleary, Giacobbe, Alfiere, Jacobs,  
attorneys)

Record Closed: September 24, 2014

Decided: October 3, 2014

BEFORE **KIMBERLY A. MOSS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner M.A. on behalf of his daughter A.A. requested mediation on behalf of A.A. because he disagreed with Jersey City Board of Education's (Board) plan to change A.A.'s placement. Mediation occurred on September 26, 2013, which did not resolve the matter. The matter was transferred to the Office of Administrative Law (OAL) as a contested matter on October 29, 2013.

Hearings were conducted on March 21, 2014, April 11, 2014, May 21, 2014, June 9, 2014, July 3, 2014, and September 24, 2014. After the conclusion of the September 24, 2014, hearing, the record closed.

### **FACTUAL DISCUSSION**

Based on the testimony presented and the documentary evidence submitted, and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the following uncontested **FACTS**:

A.A. was born on September 28, 2006. M.A. is the father of A.A. It has been determined that A.A. is eligible to receive special education services under the diagnosis of autism. A.A. was placed at the Center for Autism and Applied Behavioral Analysis (Caldwell) for the 2012-2013 school year as a result of a settlement of a prior due-process case between the parties. Dr. Bobby Newman is an expert in the following areas: psychological assessment and treatment of people with autism; applied behavioral analysis; and design and administration of special education programs for children with autism.

Richard Redfern (Redfern) is employed by the Board as a teacher of the handicapped. He received a teacher of the handicapped certificate in July 2000. He does not have a Bachelor's or Master's degree in special education. Redfern has provided workshops on ABA to colleges and parents. He is an adjunct professor at Jersey City University; where all of the classes he teaches relate to special education. He worked at the Regional Day School (Regional) which is a self-contained school for children with autism in Jersey City. All of the students he taught have been autistic. He taught three-to-ten-year-olds for half of his time at Regional. He has participated in developing individualized education programs (IEP's) for students at Regional.

Redfern was assigned to Cordero School (Cordero) on January 2, 2014. He replaced Beatrice Schreck (Schreck). His mentor at Cordero, Laurie McEllen, is a board certified behavioral analyst (BCBA). He was not involved in A.A.'s IEP although he has reviewed it.

Regional is a school for children who are on the severe end of the autism specter. Cordero is one step less restrictive than Regional. Cordero has special education and non-special education students. At Cordero there are also self-contained classes for special education students; however, some of the autistic students are not in self-contained classes. The students in the self-contained classes have one period per day where they have class with typical students.

Redfern's class at Cordero is kindergarten through second grade (K-2). The class has five students, all of whom are autistic and verbal. The maximum number of students for his class is six. There is a teacher's aide in the classroom to assist in implementing the education plans. His aide has a Bachelor of arts' degree, but not in special education.

Barbara Jo Pacifico Batista (Pacifico) is a school psychologist in the Jersey City School system. She was also a teacher of the handicapped. She was a teacher for four years and a psychologist for ten years. She has a certificate in teaching the handicapped, school psychology, and administration. She has a Bachelor's degree in psychology and a Master's degree in educational psychology. Her duties include doing cognitive assessments of students that need them. She has been assigned to Cordero for the past ten years. She manages four programs at Cordero, two grammar school autism classes from grades three to five, and two middle school autism classes from grades six to eight. She manages students in Redfern's class. In September 2013, Schreck was the teacher in the special education K-2 class at Cordero. Schreck did not have an aide in the class at that time. On January 14, 2014, it was noted that an assistant was needed in the class. An aide was assigned to the class on January 28, 2014.

Pacifico has developed over 1,000 IEP's. She does approximately eighty assessments of students per year. Pacifico did an evaluation of A.A. in 2010. Pacifico did another evaluation of A.A. in 2013 as part of the districts re-evaluation of A.A. In the 2013-2014 school year A.A. was attending the Center for Autism and Applied Behavioral Analysis (Caldwell). Caldwell is not a school approved by the State of New

Jersey. Caldwell is affiliated with Caldwell College, which is affiliated with the Catholic Church.

Elizabeth Kubie (Kubie) is employed by Strulowitz and Gargiulo (S&R) as an occupational therapist. S&R has a contract with the Board to provide services to the Jersey City Schools. Kubie has a Bachelor's degree and a Master's degree in occupational science. Kubie is a licensed occupational therapist and is certified by the State of New Jersey. She must take thirty-six hours of continuing education classes to maintain her license. The classes have included behavior autism, positive behavior training, and VBN training. She does not have a BCBA certificate. Kubie treats students in Jersey City Public Schools. S&G is approved by the State of New Jersey to provide occupational therapy services. She began working with the Jersey City schools in 2007. She is assigned to PS 37 (Cordero), PS 22, and PS 3. Most of the students she serves are in special education and eighty percent are diagnosed with autism. Kubie evaluated A.A. in 2010 and 2013. The 2013 re-evaluation of A.A. was not done in a classroom. A.A. came to the school and was evaluated in the therapy room at Cordero.

Kubie works at Cordero two and one-half days per week. She provides group and individual occupational therapy services to the students, re-evaluations of the students, and annual reviews. She takes daily and quarterly notes of the students recording their goals and percentages. Kubie is familiar with BCBA. She works closely with representatives of VBN. She reaches out to VBN when necessary.

Lenore Flanagan (Flanagan) was employed by the Board as a speech therapist. She retired on June 30, 2013. She has a certificate to teach speech language pathology. She is licensed by the state of New Jersey in speech pathology. She has a Master's degree in speech pathology. Flanagan has a certificate of clinical competency in speech pathology from the National Association of Speech Pathologists. She has taken courses in speech pathology with autistic children. She is not a BCBA.

Flanagan worked as a speech pathologist in the Mountainside School District for six years. She also worked at the Morris Union Joint Venture Commission Public

School serving special education children; the majority of the children had autism. In Jersey City she was assigned to Cordero. She worked with all of the students with speech disorders; however, most of her students are classified with communication disorder or autism. She had forty students in the 2012-2013 school year. She collects data on her students such as keeping track of correct answers and using percentages. She does not graph the data. Flanagan evaluated A.A. in 2010 and 2013. She reviewed the 2010 evaluation prior to the 2013 re-evaluation.

Karen Gullace (Gullace) has been the supervisor of special education for Jersey City Schools for the past five years, prior to that she was a special education teacher. She has a supervisor endorsement and a special education endorsement. In her position as supervisor of special education, her main focus is with compliance and staffing. If a special education class needs additional aides due to an increase in students, Gullace arranges for the class to receive the aide. The Jersey City district supervisor of special education is Candace Coccaro. There are several supervisors for the district program. There are thirteen special education lead teachers. Lead teachers provided support to other teachers. Lead teachers do not have a classroom.

Dr. Bobby Newman (Dr. Newman) is a licensed psychologist in New York and a board certified behavior analyst. He was the director of the Association for Metroarea Autistic Children (AMAC) from 1995 to 2006. He was responsible for staff training, curriculum development, psychiatric testing, and updating programs. He has been the clinical service director for Learn to Grow, which is a consulting firm that provides staff training on treatment for people with autism. He has designed schools and provided oversight on behavior management and teaching programs. He has taught at Stony Brook University and Queens College. He has written books and articles regarding the autism specter and ABA; designed classes and oversaw the delivery of instruction at a school; and has taught schools to use ABA strategies. Dr. Newman has consulted with New Jersey schools.

Dr. Newman does not have a teaching certificate in New Jersey or any other state. He does not have a school psychologist certificate issued by the State of New Jersey or any other state. He does not have a professional practice in New Jersey. He

has worked for the New York School District. Dr. Newman has previously testified for M.A. on behalf of A.A.'s brother. He has previously testified regarding Caldwell School.

Dr. Newman went to college with Sharon Reeve (Reeve) and her husband Ken Reeve. He has a social and professional relationship with the Reeves. He has spoke at conferences where Sharon Reeves also spoke. He had a presentation at a conference with Reeve a few years ago. He and Reeve worked at the same agency, Queens Service for Autistic Citizens (QSAC) from 1992 through 1994. He wrote a book with Reeve entitled Behavior Speak from which he derives all of the royalties. He may write another book with Reeve. He and Reeve both serve on the board for the Association for Science and Autism Treatment.

ABA has a variety of teaching methods, one of which is discrete trial teaching. Others include shaping and chaining. Data collection is a component of ABA. The student is taught new skills and behavior is identified that interferes with the learning process. ABA works well for children with autism. Verbal Behavior is a part of ABA. It focuses on using language functionally.

Beatrice Schreck (Schreck) is employed by the Board at Cordero as a teacher. She has a Bachelor's degree in special education. She is a certified teacher of the handicapped for the state of New Jersey. From February 2013 to May 2013, she was employed by the Board as a long-term substitute teacher to provide instructional tutoring in non-public schools for children with learning disabilities. She has worked for the Board for approximately eighteen months.

Dardana Binaku (Binaku) has been employed by the Board as a teacher's aide since December 2013, prior to that she was a substitute teacher in 2013. She has a Bachelor's degree in sociology and a New Jersey substitution teacher certification. As a substitute teacher she occasionally worked in autistic classrooms. She has no formal training in working with children with autism. She is assigned to a self-contained autistic classroom where Redfern is the teacher. She does not assist the students with toileting.

Reeve has a Bachelor's degree, a Master's degree, and a Ph.D. in psychology. She is a board certified behavioral analysis-doctoral (BCBA-D). She has taught courses in behavioral analysis and child development. She is the executive director at Caldwell. She is also the chair of the behavioral analysis department at Caldwell College. She has consulted with public schools and created programs for disabled children using behavioral analysis. She has published writings in the area of children with autism and language.

Reeve oversees everything at Caldwell including supervising the facility. It is part of the department of Behavioral Analysis at Caldwell College. The mission at Caldwell is:

Deliver services to children with autism

Train staff to teach children with autism

Conduct research

Caldwell has five staff members with Ph.D.'s. It also has twenty-six Ph.D. candidates, Master's degree candidates and undergraduate students. The Ph.D. candidate, Master's degree candidates and undergraduate students must be enrolled in Caldwell College. The Ph.D. students train the staff with the oversight of the faculty. Caldwell presently has seven full-time students and four outreach students. The ages of the current full-time students are between five and eighteen.

All strategies at Caldwell are ABA based. There is one-to-one and small group instruction. Caldwell does not have a curriculum. It individually tailors the teaching each student. It is not a New Jersey approved school. It does not offer occupational or speech therapy.

Ruth Debar is the director of outreach at Caldwell. She has a Bachelor's degree in psychology, a Master's degree in ABA and a Ph.D. in special education and ABA. She has a BCBA-D. Her duties at Caldwell include coordinating outreach services and training of the graduate students. She directly oversees two cases. She does not have

a teaching certificate. She is the lead faculty mentor for A.A. Caldwell maintains a program book for A.A. (P-57 to P-65.)

There were goals for A.A. at Caldwell in the areas of language and socialization, decreasing interfering behavior, leisure, play, and adaptive skills that promote independence. The data collection that is in the program book allows the teaching to be modified according to the data. Data on the student is collected daily. There were guidelines for A.A. in the program book to determine the best way to interact with her. Reinforcements were used with A.A. to provide feedback. The Center has parent training. The parents also provide data regarding A.A.

ABA includes more than discrete trial training. It also includes natural-environment teaching, which uses activities that motivate the student as teaching tools. It includes activity schedules that promote independently and decrease challenging behavior.

Donna Cirillo (Cirillo) is a partner at Verbal Behavior Network (VBN). She works in the office doing scheduling and billing. Thomas Caffrey (Caffrey) produces the intellectual property for VBN and works in the field. VBN has a contract with the Board. It sends consultants to Jersey City schools. The consultants are independent contractors. The consultants do invoices in triplicate: one copy goes to the Board, one goes to the teacher, and the consultant keeps one copy. The consultants used are Lauren Clark (Clark), Bonniejoy Marini (Marini), and Jennifer Fisahn (Fisahn). Clark is a BCBA. Marini and Fisahn are BCABA's. VBN does not insure that particular student's needs are met.

M.A. is the father of A.A. A.A. was born on September 28, 2006. She is presently seven years old. M.A. is responsible for child care in the household. M.A. does not have a teaching, occupational therapy, or speech therapy certificate. A.A. was diagnosed with PDDNOS in 2010, which has been upgraded to autism spectrum disorder. A.A. is at Caldwell eight hours a day. The board pays for seven hours a day. M.A. received an invitation to a meeting for A.A. from the Board dated June 21, 2013.



He has read the reports sent to him by the Board. He did not provide the Board with progress notes of A.A. from Caldwell.

### **Testimony**

#### **Richard Redfern**

Redfern testified that he has seen A.A.'s psychological assessment report. By reviewing A.A.'s psychological assessment, Redfern has a feel for her cognitive level. He has taught students whose cognitive level was much lower than A.A.'s. He could implement A.A.'s IEP in his class. She would be compatible with the students in his class.

The teaching methodology he uses is one hundred percent ABA. Verbal behavior focuses on language and social skills. Redfern has had ten years of training in verbal behavior which is a component of ABA. Redfern has the skill set to provide autistic students with free appropriate public education (FAPE). He has experience in ABA teaching and can re-direct a student's behavior with different strategies.

BCBA's provide support with behavioral plans. A BCBA is not issued a teaching certificate. While Redfern was at Regional a BCBA came to his class once a week. At Cordero a BCBA has come to his class every three weeks. VBN is also used in the class. The VBN is a program that facilitates the use of verbal behavior. VBN has a consulting relationship with the Board. The verbal behavior map (VB Map) is a tool to assess verbal behavior and outline skills in language behavior and social skills. It identifies areas that need to be addressed for each child and will show holes in development. He is currently using the VB Map at Cordero. Representatives from VBN have come to his class at Cordero three times since January 2, 2014. The VBN representatives along with Redfern and his aide have hands-on interaction with the students.

Classes at Cordero are from 8:30 a.m. to 2:30 p.m. On a typical school day each of his students gets two hours of one-to-one instruction. He uses a divider in the

classroom at times for one-to-one instruction. The one-to-one instruction can be given by the teacher, the aide, the occupational therapist, or the speech therapist. When the students are not in one-to-one instruction, they are in small group instruction. Small group instruction consists of two to three students. In the small group instruction, the students do what is specified in their IEPs. Lunch is held in the classroom. He can do a one-to-one instruction during lunch if the student has a feeding issue. The students are with him all day except for one forty-five-minute period, which is called a special. During the special Redfern's students all go together to a class which has approximately twenty typical students accompanied by the aide. The special is a social interaction situation. The aide encourages the social interaction. There is one forty-five-minute period of group occupational therapy and group speech therapy per week. In the group speech therapy there is more than one teacher. He takes the students for walks in the schools hallways for social interaction and to reinforce behavior. The class is setup according to ABA principals. The students typically get five hours of instruction per day. Cordero has an eleven-month school year for special education.

The one-to-one instruction for each student is recorded daily. Identifying the prompt level for activities of each child is recorded each week. Antecedent behavior consequences (ABC) are recorded for each student. All of the instruction is individualized. Redfern uses evidence- and research-based strategies in instruction. Some of the teaching strategies he uses are manding, tacting, intravech, and discrete trial instruction. Manding involves making a request, tacting involves labeling an item that can be seen, and intravech involves labeling an item that the student cannot be seen. Discrete trial analysis involves repeating the same skill several times with the student for reinforcement.

When Redfern receives a student's IEP, he sits with the student to assess behavior at that time. He communicates with the parents daily. A graph is used with each student to target behavior to be reduced and behavior to be increased. A functional analysis screening tool (FAST) is used to address challenging behavior. Rewards are used to reinforce behavior. He develops data plans for the students. He instructs the aide on how to collect the data.

In the class everything is color-coded for each student. The daily schedule is on the wall. Once an activity is completed it is taken off the schedule. The class rules are on the wall. There are computers in the classroom and a promethean board.

Barbara Jo Pacifico Batista

Barbara Jo Pacifico Batista (Pacifico) went to Caldwell to observe A.A. A.A.'s classroom at Caldwell is a converted dorm room. A.A. is in the room with people who are in the master's and doctoral programs for psychology at Caldwell College. Pacifico explained that Dr. Debar informed her that there is a person on the staff who is a teacher; she does not serve as a teacher at Caldwell. She is a doctoral student. Pacifico did not see Caldwell's academic criteria. Pacifico did not ask for copies of A.A.'s progress reports. She asked to see the educational curriculum, but did not receive it. She did not receive any reports from Caldwell regarding A.A. sustaining any injuries. There were no other students in the class with A.A. Pacifico testified that she did not meet Elana Garcia Alabia when she was at Caldwell.

Caldwell uses a reward system. When the student does what is required he gets a reward. Pacifico wanted to see A.A. interact with other children. A.A. asked another child to ride a scooter with her. A.A. rode off on the scooter away from the other child. She saw A.A. navigate Caldwell. She moved around the room and walked up two flights of stairs to the bounce room. She could open door with a key card. A.A. resisted doing something at Caldwell, and when she got up she accidentally struck the instructor. A.A. then fell out on the floor. The instructor threw clothes pins on the floor and had A.A. pick them up.

Pacifico observed that A.A.'s skills had improved and her responses were appropriate. She also interviewed A.A. The test showed A.A.'s IQ was 66. Her verbal IQ was 59 and her performing IQ was 69. At the time of the test A.A. was six years, eight months old. A.A. tested close to her age in receptive vocabulary when the question started with "Show Me." A.A. could not generalize those skills. If she was asked a question in a different manner, she could not answer the question. She asked

A.A. to write her name during the evaluation, which she did, although the "A" was upside down. M.A. was sent all of the evaluations of A.A. on June 21, 2013.

An eligibility meeting was held on July 1, 2013, with M.A., Pacifico and the child study team (CST). At the meeting it was agreed that A.A. was eligible for special education services under the classification of autism. The IEP meeting was then held. M.A. was given a draft of the IEP that was written by the child study team. A.A. was present at the IEP meeting, which lasted for three hours. Her behavior was typical of a child her age. M.A. stated that A.A. had problems with toileting, but there was no mention of that at Caldwell. Kubie evaluated A.A. and Flanagan evaluated A.A. At the time of the IEP meeting Flanagan had retired. Michael Ventimigle read Flanagan's report at the IEP meeting. Caldwell did not issue progress reports for A.A. to the board. The Woodcock Johnson test was done by Wendy Karis. The recommendation for A.A. was to be placed in an in-district self-contained program in the primary level. The class would be an all autistic class. The class would contain a promethean board, which is recommended by the speech and occupational therapist. A.A. would have one class with typical student peers. These services were previously recommended for A.A. Occupational therapy and speech therapy are licensed contracted services by the district. M.A. did not feel that the recommendation was appropriate. He was looking for a one-on-one instruction program. M.A. did not sign the IEP. The start date for the IEP was July 1, 2013. Students in the autistic classes have eleven months of school a year. Transitional planning is used for high school students. A.A. would not be age appropriate for transitional planning. An IEP can include a transition plan for students changing schools, but since A.A. has been to Cordero for evaluations on several occasions it would not be necessary.

A.A. has never attended a school program. Her cognitive functioning is low. She has general skills in one-to-one settings but she is not developing generalization skills. She does not have interaction with her peers. In the two hour interview A.A. could answer questions socially. A.A. says that she is tired to get out of doing things. A.A. did not exhibit self-injuring behavior. Pacifico did not see anything to indicate that A.A. needed all day one-to-one instruction.

Dr. Newman observed Redfern's class for approximately two hours. At that time Redfern keep the students on task. He had lunch with the students, asking them about colors. There was one-to-one instruction and two children were taken out of the class for occupational and physical therapy. Redfern was collecting data as he worked with the students. Redfern was working with an aide. M.A. viewed Redfern's class on March 27, 2014, with Pacifico. At that time Redfern was working out of folders. Redfern was collecting data at that time. M.A. may not have seen Redfern collecting data because Redfern's back was to M.A.

Pacifico participated in ABA workshops on September 25, 2013, December 4, 2013, and March 11, 2014. The workshops were conducted by VBN. VBN comes to the school twice a month. VBN demonstrates how to use its program and the VB Map. The lead teachers, teachers who provide training to classes attend all VBN training. VBN representatives go directly to the classes. They do not check in with Pacifico. Cordero hired a BCBA on staff in November 2013. The BCBA came to Cordero in January 2014. She will work in the autistic classrooms.

#### Elizabeth Kubie

Elizabeth Kubie (Kubie) has provided services to students in Redfern's class. Occupational therapy is generally done in the therapy room but it can also be done in the classroom. There is a group therapy session on Fridays. The therapy room is like a classroom. The equipment is in the therapy room. Redfern is a strong teacher who works well with the students. His class is presently all boys. Redfern's class would be appropriate for A.A.

A.A.'s 2013 evaluation lasted approximately ninety minutes. She did not demonstrate any self-injurious behavior, tantrums, or drop to the floor. A.A. could sit at a table and did not need much physical prompting. She easily engaged in activities that interest her. If she did not want to do an activity it was more difficult to engage A.A. When she did not like an activity, her attention span was short and she needed verbal prompts. Kubie had a good rapport with A.A. Kubie has not observed A.A. in a classroom or group setting. Kubie notice that A.A. had difficulty engaging the zipper of

a coat. Once the zipper was engaged she could zip the coat up. A.A.'s attention has improved from 2010 to 2013. Her attention span was not different from any other six-year-old child.

A.A.'s biggest needs are in the area of fine motor skills, particularly grasping and dexterity. She has decreased strength and hyperextension in her joints. She has trouble with self-care age-appropriate skills like using a zipper and buttoning buttons. She had difficulty with visual perception skills. A.A. rotated and inverted objects while writing.

Kubie recommended A.A. receive occupational therapy twice a week; one individual session and one group session. The individual session is to refine her skills and the group session for socialization. There is no indication that the only way that A.A. can learn is with one-to-one sessions. In a group setting peers can learn from peers. A.A. would be placed in a peer group that would be appropriate for peer modeling and allow her to engage with other children.

Kubie is familiar with the IPE for A.A. Group occupational therapy is written into A.A.'s IEP. She believes that occupational therapy would be beneficial for A.A. It is possible that A.A. could develop the skills without occupational therapy. At Cordero there are activities outside of occupational therapy where fine motor skills can be developed. S&G has an after-school program that is open to all special needs students in Jersey City.

#### Lenore Flanagan

Lenore Flanagan (Flanagan) testified that A.A.'s evaluation took place in therapy room at Cordero. It was approximately ninety minutes long. The observation of A.A. took place at Caldwell. A.A. scored low in receptive and expressive communication. The assessment was based on many things including standardized testing, observation, and speaking with teachers and parents. A.A. needed frequent motivation to stay on task during the evaluation. The preschool language scale test was the only test that was administered to A.A. in 2010 and 2013. The 2013 evaluation was more advanced

than the 2010 evaluation because A.A. was older in 2013. Flanagan compared the results of the 2010 evaluation to the 2013. In the area of receptive communication A.A. had eleven more correct answers in 2013 than 2010. In the area of expressive communication A.A. had three more correct answers in 2013 than in 2010. Flanagan had expected A.A. to have progressed more in the area of expressive communication.

Flanagan observed A.A. at Caldwell. A.A. had a book from which she could choose one or two activities. A.A. brushed her teeth, played in the bounce room, listened to a CD, and then went back to the bounce room. Flanagan did not see A.A. receiving any math instruction. She did not observe A.A. in a group setting. She spoke to Dr. Debar who stated that A.A. had twenty percent peer interaction and eighty percent one-to-one instruction. Flanagan was not shown any instructional material for A.A. at Caldwell. A.A. was not receiving speech therapy at Caldwell. At Cordero A.A. would be in a class with five other students. She would also have interaction with the general education population.

Flanagan recommended that A.A. receive speech therapy twice a week in two small group sessions. A.A. has a severe communication disorder. She could learn from a group setting. Flanagan has had students whose communication difficulties were as severe as A.A.'s. Flanagan believes peer modeling would be beneficial to A.A. Flanagan's wrote the speech and language portion of the 2013 IEP.

Flanagan works on a skill with a student until the student reaches a certain degree of mastery. She does not use rote ABA or VBN techniques with the students.

#### Karen Gullace

Karen Gullace (Gullace) explained that special education class size is dictated by the code. Cordero has seven autistic classes. Gullace believes that VBN went to Cordero more than two times from September 2013 through March 2014. Four visits from VBN to a school are sufficient because VBN supports the teachers. It is the teachers who implement the program.

Gullace does not attend all IEP meetings. She was involved in A.A.'s 2013 IEP because the Board was trying to reach an agreement with M.A.

Dr. Bobby Newman

Dr. Newman recalled that he evaluated A.A. in 2012. At that time he found that she met the criteria for autism. She had delayed language and social interaction skills as well as behavioral difficulties. Dr. Newman has not re-evaluated A.A. since 2012.

Dr. Newman observed A.A. on or about January 14, 2014, at the Caldwell School. He saw A.A. with another child at 9:45 a.m. She was next with a student from 10:20 to 10:30. She was with a child at 11:15 and at lunch at 12:15. A.A. had sporadic contact with other children in the bouncy castle and the toy room. On that visit, he did not witness A.A. eloping but she dropped on the floor twice. A.A.'s cognitive range is a score of 66. This score places A.A. in the delayed group. Based on this observation he determined that A.A. needs an intensive teaching model based on ABA. She needs twenty-five to forty hours of teaching per week. The teaching could be one-to-one. He would want to determine if she can learn in a group setting. Caldwell is appropriate for A.A. because it provides intensive data-based instruction. It is using successful strategies with A.A. She is making progress at Caldwell in language and social skills. A.A. worked on self-help skills and social play with others.

Caldwell reported data weekly. Its data showed that A.A.'s tantrum's decrease from 2012 to 2014; her stereotypy and repeated self-stimulated behavior decreased from 2012 to 2014; and her dropping behavior decreased from 2010 to 2014. This data does not change his opinion that A.A. needs behavior management.

Caldwell is consistent with the peer-reviewed scientific research that is appropriate for children like A.A. It is reasonably calculated to confer meaningful educational benefit.

Dr. Newman observed special education students and teachers at Cordero School for two hours. He did not talk to a behavioral analysis at Cordero. The class



had three to four students, one teacher, and one aide. Cordero is not appropriate for A.A. It does not have the staffing that A.A. needs. The supervision and data analysis at Cordero do not meet A.A.'s needs. He does not know the level of support at Cordero from behavioral analysis. Cordero should have frequent visits from behavioral analysis. Infrequent visits do not meet the criteria. Behavioral analysis visiting the classroom two to four times per year is not adequate. The only person taking data at Cordero was the teacher. Redfern was effective with the students. The Cordero program is not intensive enough for A.A. and has a lack of oversight. Its strategies would need to be altered for A.A. At Caldwell if A.A. was not achieving a desired result with a prompt, the prompt would be changed. Newman did not see specific generalization skills at Cordero. The behavior strategies are not administered as frequently at Cordero as they are at Caldwell. He did not observe the students at Cordero in any of the classes with non-special education students.

A.A. can have a rapport with a teacher. She would benefit from social-skills training that would include interaction with other children. A.A.'s social skills are not near her age level.

### Beatrice Schreck

Schreck taught an autism class at Cordero from September 2013 through December 2013. Her class had one student when the school year began. By December 2013 her class had four students. All of the students had autism. In September 2013, Schreck had no training in teaching children with autism or ABA. She received training from VBN. A VBN supervisor came to her class on two occasions. Fisahn came to her class three times to model how to teach children with autism. Dorothy Walsh, a lead teacher, came to her class four times to observe and offered her suggestions for improvement and showed her how to use certain tools.

Schreck implemented ABA. She used functional communication and manding. The students would have prompting and unprompting sessions. She would have pairing sessions with the children using reinforcers. Data was collected on a weekly basis on tacting, prompts, and pairing. Each child had a chart to determine the need for

prompting. She tried to have the students speak naturally. She also collected data on number and letter recognition. Schreck did not have an aid in the class from September 2013 to December 2013.

Schreck administered the VB map for three of the students. The VB map provided information regarding the children's function, social, and tactical skills. The VB map is administered to the student twice a year. No functional behavioral assessments were done of the children in the classroom.

Schreck made sure the children interacted with typical students. The students had lunch in the classroom. Schreck is not familiar with the term stereophy.

#### Sharon A. Reeve

Reeve testified that A.A. began at Caldwell in May 2011. She attends Caldwell from 9:00 a.m. to 5:00 p.m. Her level of functioning is deceptive. That is, A.A. sounds and looks like a typical child, but her language is not meaningful. She is three years behind her peers. She tantrums, elopes, engages in self-injurious behavior, repetitive behavior, and vocalizations. These behaviors impair A.A.'s learning. A.A. has trouble with basic concepts. She is good at imitation. A.A. has made progress at Caldwell. A certified teacher, Elena Albana Garcia (Garcia) works with A.A. the majority of time at Caldwell. Garcia has a teacher of the handicapped certification.

Caldwell collected data of various behaviors of A.A. including tantrums, stereotypy, self-injurious behavior, eloping, dropping, and aggression. All of the behaviors were reduced by 2014.

Caldwell College is affiliated with the Catholic Church. Part of Caldwell's outreach includes teaching children to go to religious services. The website for the Caldwell states that it is a program for very young children.

Ruth Debar

Ruth Debar (Debar) explained a typical day for A.A. at Caldwell would have one-to-one teaching time, out of class time with a peer, and small group activity time—all of which is ABA based. Twenty percent of A.A.'s time is spent with peers. She has difficulty with generalization. Generalization is whether a child can use certain skills in ways other than the way she was taught the skill. Being in a small group setting may help A.A.'s generalization skills depending on the strategy that is employed. Exposure to peers alone will not help her generalization skills without the specific strategy. Caldwell has New Jersey certified teachers on staff; one, Elena Garcia, works with A.A. Garcia is a Ph.D. student who is employed by Caldwell twenty hours per week. Caldwell ensures that each student has a certified teacher in its group.

Pacifico observed A.A. at Caldwell for two hours. A.A.'s program book was made available to Pacifico. Pacifico did request to view the documents in A.A.'s program book; she did view the tantrum graph. During Pacifico's visit, A.A. became upset, she fell backward, hitting an instructor and they both fell on the floor. A.A. was given a benign task to decrease the tantrum.

A.A. has made progress at Caldwell, but she still has problems. The tantrum graphs of 2012 show that A.A.'s tantrums decrease when she was given repetitive tasks. In 2013 A.A. was still provided with repetitive tasks based on her tantrums. In the summer of 2013 her program was modified. In spring 2014 her tantrum behavior was recorded in minutes. Some days there would be no tantrums and other days she would have tantrums of twenty minutes during a day. At that time her dropping behavior was variable. In spring 2014 A.A.'s stereotypy/tantrum behavior occurred less than ten percent of the time. A.A.'s self-injurious behavior decreased after February 2014. A.A.'s engages in these behaviors as a result of a demand.

M.A.

M.A. met with the Board regarding A.A. on July 1, 2013. He did not send a 2013 parental participation form to the Board. The 2010 parental participation form still

stands. Michael Ventimiglia was present for the meeting but did not do the speech evaluation of A.A. There was an occupational therapist available by phone, Christina Roberts, but she did not evaluate A.A. None of A.A.'s teachers at Caldwell were present at the eligibility meeting. He disputed Pacifico's contention that A.A. could write. At the eligibility conference he gave A.A. a prompt to write her name, but she did not write her name. He was concerned with the occupational therapy report because when he took A.A. for the evaluation he was told that it would take sixty minutes but the evaluation took ninety minutes. He disagrees that A.A. can navigate her environment safely. At Caldwell, A.A. was having an accident every seven to ten days. The conclusion of the eligibility conference was that A.A. was available for special education services based on a diagnosis of autism.

The IEP meeting was conducted directly after the eligibility conference. The people present at the IEP meeting were for the most part the same people who were present for the eligibility conference. The IEP meeting took approximately forty-five minutes. M.A. disagrees with the IEP in several areas. Page 3 of the IEP under A.A.'s strengths states that she appears happy when she is signing. However, signing is a problem for her because it interferes with her ability to learn. The language in the IEP regarding A.A.'s motor skills is not the ABA language with which he is familiar. M.A. believes that A.A. would need transition services. Transition would mean that the staff would be familiar with the services A.A. received at Caldwell and use those programs at her new placement. He also believes the functional behavior assessment does not include all of A.A.'s problems. It lists prompts as reinforcement and they are not the same thing. It does not mention a token system. The target behavior in the IEP is too vague.

M.A. is concerned that the IEP goals are not individualized to A.A. There is no correlation with the IEP goals and what she is doing at Caldwell. He is concerned with the objectives because A.A. has minimal cognitive and verbal skills. She repeats things but does not know what she is saying. She is not ready to understand negation. There is no discussion of the extended school program. There is no discussion of the special education classroom. The IEP does not state anything about VBN or ABA. He did not ask what methodology on which the IEP was based at the IEP meeting. He did not ask

if A.A. would get an ABA based program at the July 1, 2013, IEP meeting. He has concerns with any supplementary aids or services that are not ABA services or aides. He is concerned about transportation because it is in a group. Forty minutes with a group on a bus is too much time without supervision. The only services proven to work are ABA. There was no effort to provide appropriate programs or placement for A.A. After the IEP meeting, M.A. did not request modifications or changes to the IEP.

He observed the proposed classroom for A.A. on March 27, 2014. The classroom had five children and two adults; Redfern and an aide. The ratio of students to adults could cause a complete lack of control of the students. There was no reward system or token economy. He did not see data being collected. He did not see individual schedules or materials. It seemed like the students were in control. The use of language when telling one student "good job" is inappropriate.

M.A. has no concerns about Caldwell's religious affiliation.

### **FACTUAL DISCUSSION**

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

In order to assess credibility, inferences may be drawn concerning the witness's expression, tone of voice, and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness's interest in the outcome, motive or bias should be considered.

I **FIND** the testimony of the witnesses who are employed by the Board to be credible. Redfern showed a clear understanding of teaching handicapped children and in particular teaching children with autism. He stated that he teaches using an ABA

methodology. Schreck had not used ABA teaching methodology prior to coming to Cordero. She had VBN training while she was at Cordero. Although Schreck stated that Fisahn came to her class three times and the invoices only show Fisahn coming to the class one time, the invoices also show that on three occasions Schreck attended VBN training between September 2013 and December 2013 with Fisahn. Pacifico was clear and concise she acknowledged that A.A. accidentally struck the instructor at Caldwell. Kubie and Flanagan were also credible. They noted changes that they had seen in A.A. since the prior 2010 examinations. In addition their testimony was straightforward in the fact that A.A. needs services that are not being provided to her at Caldwell. Gullice was also credible her testimony was clear, concise, and truthful.

I **FIND** Dr. Newman not to be credible. He has a business and social relationship with Reeve who is the executive director at Caldwell. He has worked with Reeve and presented paper with Reeve. They wrote a book together where Newman receives all of the royalties; in addition, he and Reeve may write another book together. His personal and professional relationship with Reeve greatly diminishes his creditability. His social and professional relationship with Reeve lessens his objectivity. In addition, Dr. Newman has not evaluated A.A. since 2012.

Dr. Reeve and Dr. Debar did not provide any testimony or relevant evidence as to whether the district provided FAPE to A.A. Their testimony was regarding A.A.'s progress at Caldwell; however, it did not specifically address the IEP in question.

I **FIND** the following additional **FACTS**:

The July 1, 2013, IEP for A.A. recommended that she be placed in district in a self-contained class at the primary level. She would have language arts, reading, math, science, social studies, and electives five times per week. In addition she would have speech language therapy twice a week in a small group session for thirty minutes. She would have occupational therapy once a week individually for thirty minutes and once a week in a small group for thirty minutes. She would receive extended school year services. A.A.'s IQ was 66 when tested in 2013. Her verbal IQ was 59 and her performing IQ was 69. At the time of the test A.A. was six years, eight months old.

The IEP outlined objectives and goals for A.A. in the areas of: self care, fine motor skills, language and speech semantics and syntax, language and speech pragmatics, social and emotional development, language and arts literacy, mathematics, science, social studies, and family life skills. These goals and objectives were individualized to A.A. The special education teacher, the speech and language specialist and occupational therapist will implement strategies to achieve the objectives. The IEP specifically addresses behaviors that interfere with A.A.'s ability to learn and creates strategies to prevent the behavior in the Functional Behavior Assessment.

Pacifico and Flanagan observed A.A. at Caldwell in addition to doing evaluations of A.A. in 2013. Kubie also evaluated A.A. in 2013. M.A. wanted A.A. to be in a one to one instruction program. The IEP did not include transitional services for A.A. because the transitional services referred to in the IEP are for students going from primary school to high school. M.A. was present for the IEP meeting. He did not agree with the IEP.

On April 17, 2014, Pacifico sent an email to M.A. to schedule an evaluation plan consent meeting. M.A. did not respond to this email. Pacifico sent M.A. a second email on May 2, 2014, stating that the evaluation plan meeting was scheduled for May 6, 2013, at 8:00 a.m. The evaluation plan meeting took place at that time. On May 28, 2013, Pacifico sent M.A. an email to inform him when the assessments would take place. Two of the assessments had to be rescheduled because M.A. could not attend. All of the assessments were sent to M.A. on June 21, 2013.

Schreck would have been A.A.'s teacher in September 2013 at Cordero. Although Schreck had not previously taught autistic children, she is a certified teacher of the handicapped in New Jersey. The invoices from VBN show that Fisahn came to Shrek's classroom one time on October 16, 2013. Schreck was required to attend three workshops that were conducted by Fisahn on September 25, 2013, October 2, 2013, and December 4, 2013. Lead teacher Walsh came to her class four times and would offer suggestions and work with her in social settings with the children. Schreck used applied behavioral analysis principals of manding, tacting, and prompting. She collected data weekly on tacting, prompts, and pairing of the students. Redfern would

have been A.A.'s teacher beginning in January 2014. He uses ABA methodology with the students. He uses verbal behavior and the verbal behavior map. He also uses the teaching strategies of manding, tacting, intravech, and discrete trial instruction. He records data of the children in various ways using various documents. His students receive one-to-one instruction and group instruction. The verbal behavior principals are taught and implemented by the teachers, not the VBN consultants.

Dr. Newman does not believe that Cordero is appropriate for A.A. However, Dr. Newman's business and social relationship with Reeve greatly reduces his creditability. However, he states that A.A. would benefit from interacting with other children. At Caldwell the vast majority of the time A.A. does not interact with other children.

A.A. had eighty percent one-on-one instruction and twenty percent group instruction at Caldwell. A.A.'s incidences of tantrum behavior, dropping behavior, stereotypy, and self-injurious behavior decreased as shown by the graphs while she was at Caldwell. Caldwell College is affiliated with the Catholic Church. A.A. did not receive speech language therapy or occupational therapy at Caldwell.

M.A. is an extremely concerned parent. He believes that A.A. should remain at Caldwell. He is concerned because the IEP does not explicitly state anything about ABA or VBN. He did not ask what methodology that the IEP was based on. Redfern and Schreck stated that they used ABA principals. The teachers also use the VBN. The teachers implement the VBN strategies. The IEP methodology was based on peer-reviewed research to the extent possible.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The IDEA provides federal funds to assist participating states in educating disabled children. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 179, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 695 (1982). One of purposes of the IDEA is "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20



U.S.C.A. § 1400(d)(1)(A). In order to qualify for this financial assistance, New Jersey must effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C.A. § 1401(9); N.J.A.C. 6A:14-1.1(d). The district bears the burden of proving that a FAPE has been offered. N.J.S.A. 18A:46-1.1.

The United States Supreme Court has construed the FAPE mandate to require the provision of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley, supra, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. New Jersey follows the federal standard that the education offered “must be ‘sufficient to confer some educational benefit’ upon the child.” Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). The IDEA does not require that a school district “maximize the potential” of the student, Rowley, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708, but 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). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a “trivial” or “de minimis” educational benefit is required, and the appropriate standard is whether the IEP provides for “significant learning” and confers “meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom., Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). This determination must be assessed in light of the individual potential and educational needs of the student. T.R., supra, 205 F.3d at 578; Ridgewood, supra, 172 F.3d at 247-48. The appropriateness of an IEP is not determined by a comparison of the private school and the program proposed by the district. S.H., supra, 336 F.3d at 271. Rather, the pertinent inquiry is whether the IEP

offered a FAPE and the opportunity for significant learning and meaningful educational benefit within the least restrictive environment.

Toward this end, an IEP must be in effect at the beginning of each school year and be reviewed at least annually. 20 U.S.C.A. § 1414 (d)(2) and (4); N.J.A.C. 6A:14-3.7. A complete IEP must contain a detailed statement of annual goals and objectives. N.J.A.C. 6A:14-3.7(e)(2). It must contain both academic and functional goals that are, as appropriate, related to the Core Curriculum Content Standards of the general education curriculum and “be measurable” so both parents and educational personnel can be apprised of “the expected level of achievement attendant to each goal.” Ibid. Further, such “measurable annual goals shall include benchmarks or short-term objectives” related to meeting the student’s needs. N.J.A.C. 6A:14-3.7(e)(3). The New Jersey Supreme Court has recognized that “[w]ithout an adequately drafted IEP, it would be difficult, if not impossible, to measure a child’s progress, a measurement that is necessary to determine changes to be made in the next IEP.” Lascari, supra, 116 N.J. at 48.

Parents who withdraw their child from public school and unilaterally place the child in a private placement while challenging the IEP may be entitled to reimbursement if the administrative law judge (ALJ) finds that the school district’s proposed IEP was inappropriate and that the parents’ unilateral placement was proper. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 12, 114 S. Ct. 361, 365, 126 L. Ed. 2d 284, 292 (1993); School Comm. of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 370, 105 S. Ct. 1996, 2002-03, 85 L. Ed. 2d 385, 395 (1985.) More particularly, an ALJ may require the district to reimburse the parents for the cost of that enrollment if “the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and . . . the private placement is appropriate.” N.J.A.C. 6A:14-2.10(b); see 20 U.S.C.A. § 1412(a)(10)(C)(ii). However, parents who unilaterally withdraw their child from public school and place the child in a private school without consent from the school district “do so at their own financial risk.” Burlington, supra, 471 U.S. at 374, 105 S. Ct. at 2004, 85 L. Ed. 2d at 397. If it is ultimately determined that the program proposed by the district affords the child with a FAPE, then the parents are barred from recovering reimbursement of tuition and related expenses. Ibid. A

court may reduce or deny reimbursement costs based on the parents' unreasonable behavior during the IEP process. 20 U.S.C.A. § 1412(a)(10)(C)(iii). In this regard, the cost of reimbursement "may be reduced or denied" if, at the most recent IEP meeting the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district; if the parents did not give written notice to the district of their concerns or intent to enroll their child in a non-public school at least ten business days prior to the removal of the student from the public school; or upon a judicial finding of unreasonableness with respect to actions taken by the parents. N.J.A.C. 6A:14-2.10(c)(1), (2), (4).

The issue in this matter is whether the education offered in the 2013-2014 IEP to A.A. would have provided FAPE to A.A. The IEP would have conferred an educational benefit to A.A. for the 2013-2014 school year. She would receive an educational benefit in the areas of speech therapy and occupational therapy. A.A. has not received speech or occupational therapy at Caldwell. It also included a reward system to reinforce A.A.'s behaviors. The IEP is individualized to A.A. It has strategies to prevent behavior by A.A. that interferes with her ability to learn. It has goals for A.A. to attain mastery in areas that she is currently having difficulty.

A.A. would be provided with greater opportunities to interact with children her age, which could help her with generalization. The goals and objectives of the IEP are to be implemented by the teacher, speech language therapist, and occupational therapists. Schreck and Redfern teach the class at Cordero using ABA methods. They use verbal behavior which is a form of ABA. The teachers implement the verbal behavior principles. Consultants from VBN come into the classroom and provide workshops for the teachers. The classroom A.A. would be in is self-contained. There were no more than five students in the class during the 2013-2014 school year. A.A. can receive one-to-one and group instruction in the class.

The IEP provides A.A. within a less restrictive environment than Caldwell. At Caldwell, A.A. spent eighty percent of her time one-on-one with an instructor. At Cordero, A.A. would be in a classroom with other students. In addition, she would have an opportunity to be in special class where she would interact with typical students. It is

clear that Cordero will provide A.A. with an ABA-based education that will confer her with an educational benefit.

The IEP meeting was to take effect on July 1, 2013. 20 U.S.C.A. § 1415(f)(3)(E)(ii) provides:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

In this matter the Board had an IEP at the meeting that provided FAPE to A.A. Prior to the IEP she was evaluated by Pacifico, Kubie, Flanagan, and Wendy Karris. Pacifico and Flanagan visited the Caldwell and observed A.A. as part of their assessments for A.A. The Board and M.A. had communications from April 17, 2013, thru July 1, 2013, to schedule assessments and an IEP for A.A. The IEP being scheduled on the day it was to be implemented did not impede A.A.'s right to a free appropriate public education, did not significantly impede her parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to A.A., or cause a deprivation of educational benefits.

I **CONCLUDE** that the placement proposed by the District for A.A. was appropriate, individualized for A.A., and designed to provide A.A. with a meaningful educational benefit. It provided FAPE to A.A.

**ORDER**

It is hereby **ORDERED** that the relief requested by petitioner be **DENIED** and the petition be **DISMISSED**.

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.

October 3, 2014

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**KIMBERLY A. MOSS, ALJ**

Date Received at Agency

October 3, 2014\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

ljb

**WITNESSES**

**For Petitioner:**

Dr. Bobby Newman  
Karen Gullace  
Beatrice Schreck  
Dardana Binaku  
Dr. Sharon A. Reeve  
Ruth DeBar  
Donna Cirillo  
M.A.

**For Respondent:**

Richard Redfern  
Barbara Pacifico-Batista  
Elizabeth Kubie  
Lenore Flanagan

**EXHIBITS**

**For Petitioner:**

P-1    McCarton Report and Glossary  
P-2    Not In Evidence  
P-3    Not In Evidence  
P-4    Not In Evidence  
P-5    Not In Evidence  
P-6    Not In Evidence  
P-7    Not In Evidence  
P-8    Not In Evidence  
P-9    Not In Evidence  
P-10   Not In Evidence  
P-11   Not In Evidence  
P-12   Not In Evidence

- P-13 Not In Evidence
- P-14 Not In Evidence
- P-15 Not In Evidence
- P-16 Not In Evidence
- P-17 Not In Evidence
- P-18 Not In Evidence
- P-19 Not In Evidence
- P-20 Not In Evidence
- P-21 Not In Evidence
- P-22 Not In Evidence
- P-23 Not in Evidence
- P-24 Not in Evidence
- P-25 Not in Evidence
- P-26 Not in Evidence
- P-27 Not in Evidence
- P-28 Not in Evidence
- P-29 Newman Evaluation of A.A. dated January 25, 2012
- P-30 Newman Observation of A.A. at Caldwell dated January 30, 2012
- P-31 Not in Evidence
- P-32 Not in Evidence
- P-33 Not in Evidence
- P-34 Settlement Agreement dated May 15, 2012
- P-35 Order Approving Settlement dated July 17, 2013
- P-36 Not in Evidence
- P-37 Not In Evidence
- P-38 Not in Evidence
- P-39 Not In Evidence
- P-40 Evaluation Meeting Notice dated June 21, 2013
- P-41 2013 Child Study Team Psychological Report
- P-42 2013 Child Study Team Educational Report
- P-43 2013 Child Study Team Speech Reports
- P-44 2013 Child Study Team Occupational Therapy Report
- P-45 2013 Child Study Team Social Report

- P-46 July 2013 Proposed IEP
- P-47 Mediation Request dated July 15, 2013
- P-48 Newman Observation of A.A. at Caldwell dated January 15, 2014
- P-49 Newman Observation of Cordero School dated March 3, 2014
- P-50 Newman CV
- P-51 Not in Evidence
- P-52 Not In Evidence
- P-53 Not in Evidence
- P-54 Not in Evidence
- P-55 Not in Evidence
- P-56 Not in Evidence
- P-57 A.A.'s Goals and Objectives from Caldwell (only records from September 2012 to present are in evidence)
- P-58 A.A.'s daily Skill Acquisition Data from Caldwell (only records from September 2012 to present are in evidence)
- P-59 A.A.'s Behavior Guidelines from Caldwell (only records from September 2012 to present are in evidence)
- P-60 A.A.'s Behavior Graphs from Caldwell (only records from September 2012 to present are in evidence)
- P-61 A.A.'s Parent Training Chart from Caldwell (only records from September 2012 to present are in evidence)
- P-62 A.A.'s Joint Activity Schedule from Caldwell (only records from September 2012 to present are in evidence)
- P-63 A.A.'s Data from Caldwell (only records from September 2012 to present are in Evidence)
- P-64 A.A.'s Progress Reports from Caldwell (only records from September 2012 to present are in evidence)
- P-65 A.A.'s Data from Mastered Programs from Caldwell (only records from September 2012 to present are in evidence)
- P-66 Contract between Jersey City Public Schools and VBN Training dated September 24, 2010
- P-67 Invoices from VBN Training dated October 16, 2013, January 16, 2014, January 21, 2014, two dated February 18, 2014, March 17, 2014, and May 19, 2014



- P-68 Invoices from VBN Training Dated November 18, 2013, November 18, 2013, January 6, 2014, May 12, 2014, May 19, 2014, and June 17, 2014.
- P-69 Consultant Notes
- P-70 Certifications of Bonniejoy Marini, Lauren Clark, and Jennifer Fisahn
- P-71 Subpoena of Donna Cirillo dated June 30, 2014

For Respondent:

- R-1 Redacted (by petitioner's counsel) email between M.A. and Sharon Reeve dated May 2, 2011
- R-2 Center for Autism and Applied Behavioral Analysis Brochure
- R-3 Not in Evidence
- R-4 Not in Evidence
- R-5 Psychological Assessment of A.A. done by Pacifico dated May 29, 2013
- R-6 Not in Evidence
- R-7 Not in Evidence
- R-8 Educational Assessment of A.A. done by Wendy Karras dated June 7, 2013
- R-9 Speech Assessment Report of A.A. done by Flanagan dated October 13, 2010
- R-10 Speech Assessment Report of A.A. done by Kathryn Boruta dated August 23, 2011
- R-11 Speech Assessment of A.A. done by Flanagan dated June 6, 2013, and June 11, 2013
- R-12 Not in Evidence
- R-13 Not in Evidence
- R-14 Occupational Therapy Initial Evaluation done by Elizabeth Boccella dated October 21, 2010
- R-15 Occupational Therapy Evaluation Resources, done by Kubie dated June 14, 2013.
- R-16 Email from Pacifico to M.A. dated April 17, 2013
- R-17 Emails between Pacifico and M.A. dated May 2, 2013 and May 3, 2013
- R-18 Invitation to a meeting for A.A. dated April 30, 2013
- R-19 Parental Notice Following Reevaluation Meeting With Parent Consent Form dated May 6, 2013
- R-20 Emails between M.A. and Pacifico dated May 28, 2013, to June 4, 2013

- R-21 Emails between M.A. and Pacific dated June 6, 2013, to June 11, 2013
- R-22 Prior Notice for A.A. from Pacifico dated June 21, 2013
- R-23 Invitation to a meeting for A.A. from Pacifico dated June 21, 2013
- R-24 Emails between M.A. and Pacific dated June 26, 2013, and June 30, 2013
- R-25 Parental Notice of Eligibility for A.A. dated July 1, 2014
- R-26 Draft IEP Meeting date July 1, 2013
- R-27 M.A. Email to Pacifico Regarding Mediation dated July 15, 2015
- R-28 Pacifico Contact Log dated September 29, 2011, to March 3, 2014
- R-29 Emails between Pacifico and Dr. Newman dated January 14, 2014, to February 26, 2014
- R-30 Observation Case Note of Pacifico dated March 3, 2014
- P-31 Emails between M.A. and Pacific dated March 4, 2014, and March 6, 2014
- P-32 Resume of Redfern (address and phone number redacted)
- P-33 Teacher of the Handicapped Certificate of Redfern
- P-34 New Jersey City University Department of Special Education Syllabus for Corrective Techniques for Teaching the Exceptional Child by R. Redfern
- P-35
  - (a) One-on-One Instruction Form
  - (b) Weekly Data Collection Form
  - (c) ABC Sheet
  - (d) Probe of Daily Skills Form
  - (e) Discrete Trial Instruction Form
  - (f) Two-month Graph Form
  - (g) FAST Functional Analysis Screening Tool
- P-36 Close-up pictures of "I am Working for" Boards Classroom Pictures (1-7)
- P-37 Notice of Workshop for Child Study Team Members - Overview of VB/ABA dated March 12, 2014
- P-38 Memo to principals from Dr. Gerry Crisonino dated February 24, 2014 (re: Workshop)
- P-39 Memo to principals from Dr. Gerry Crisonino dated September 11, 2013 (re: Workshop)
- P-40 Invoices from VBN dated in 2012, 2013, and 2014
- P-41 Not in Evidence
- P-42 Not in Evidence

P-43 Resume of Kubie

P-44 Not in Evidence

P-45 Kubie's Occupational Therapist Endorsement and License

P-46 Pacifico endorsements - school psychologist, supervisor, and teacher of the  
handicapped

P-47 Not in Evidence

P-48 Caldwell Charts for A.A. (a) Tantrum Summer 2012 to Spring 2014; (b)  
Stereotypy/Tantrum Fall 2012 to Fall 2013; (c) Behavior data Summer 2012 to  
Spring 2014; (d) Toileting Summer 2012 to Spring 2014; (e) Lunch Data July  
2013 to March 2014

P-49 Resume of Schreck